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The Federal Railroad Administration's (FRA) Safety Jurisdiction over Tourist Railroads

The authority of FRA, as a delegate of the Secretary of Transportation, to regulate railroads arises from title 49 of the United States Code, section 20103, which gives the agency plenary authority over “every area of railroad safety.” 49 U.S.C. § 20103; 49 C.F.R. § 1.49. The term “railroad” is defined by the Act as “any form of nonhighway ground transportation that runs on rails or electromagnetic guideways . . .” 49 U.S.C. § 20102(2)(A). The definition excludes only rapid transit systems that operate in urban areas and are not connected to the general railroad system of transportation (general system). 49 U.S.C. § 20102(2)(B). The term “general railroad system of transportation” is defined at Appendix A to 49 C.F.R. Part 209 as: “the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas.” Portions of the network that lack a physical connection may still be part of the general system by virtue of the nature of the operations that occur. See id. The term “railroad carrier” is defined by the statute as “a person providing railroad transportation.” 49 U.S.C. § 20102(3).

For resource and policy reasons, FRA does not extend the reach of most of its regulations as far as the statute permits. See Appendix A to 49 C.F.R. Part 209. In an effort to clarify the proper extent of the exercise of FRA’s jurisdiction over tourist railroads, we have recently settled on several principles that we will use as our current guidelines.

We will exercise jurisdiction over all tourist operations, whether or not they operate over the general system, except those that (1) operate over track that is less than 24 inches in gage and/or (2) are insular.¹ Operations on track that is less than 24 inches in gage have never been considered railroads under the Federal railroad safety laws and are generally considered miniature or imitation railroads.

We will consider a tourist operation insular if its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of any member of the public, except a business guest, a licensee of the tourist operation or an affiliated entity, or a trespasser would be affected by the operation. An operation will not be considered insular if one or more of the following exists on its line:

- A public highway-rail grade crossing that is in use;
- A rail-rail grade crossing that is in use;
- A bridge over a public road or waters used for commercial navigation; or

¹ Note that 49 C.F.R. Part 228, Subparts B and F (passenger hours of service), and 49 C.F.R. Part 237 (bridge safety standards), apply to both insular and non-insular tourist railroads.

- A common corridor with a railroad, i.e., its operations are within 30 feet of those of another railroad.

The mere fact that a tourist operation is not connected to the general system will not make it insular under the above criteria. While these criteria will tend to sort out the insular theme parks and museums, there will still be a need to do a case-by-case analysis in some close situations.

How the Federal Railroad Safety Laws and Regulations Apply to Tourist Railroads

Tourist railroads are not required to comply with 49 C.F.R. Part 227 (occupational noise exposure), Part 238 (passenger equipment safety) or Part 239 (passenger train emergency preparedness). Tourist railroads that operate on the general system must comply with all statutes and all other regulations and orders unless and until any appropriate waiver has been applied for and granted. Of course, FRA generally lacks the authority to waive statutory requirements.

Some tourist railroads are neither insular nor part of the general system (i.e., stand-alone lines with no freight traffic). For these railroads, only the following regulations and statutory provisions apply:

- The requirements of the safety appliance laws and a provision of the locomotive inspection law found at 49 U.S.C. §§ 20102, 20301, 20302, 20502-20505, 20902, 21302, and 21304 (formerly 45 U.S.C. §§ 2, 4, 9, 11, and 22); and the requirements of the signal inspection law found at 49 U.S.C. §§ 20102, 20502-20505, 20902, 21302, and 21304 (formerly 49 App. U.S.C. § 26);
- Hazardous materials regulations of the Pipeline and Hazardous Materials Safety Administration (49 C.F.R. Parts 171-179);
- FRA's procedural regulations at 49 C.F.R. Parts 209, 211, and 216;
- Noise emission regulations (49 C.F.R. Part 210): but note that the regulations do not apply to steam locomotives;
- Freight car safety standards (49 C.F.R. Part 215) applicable only to standard gage lines;
- Use of locomotive horns at highway-rail grade crossings (49 C.F.R. Part 222): but does not apply to passenger railroads that operate entirely off of the general system and at speeds of 15 miles per hour or less over public highway-rail grade crossings;
- Reflectorization of rail freight rolling stock (49 C.F.R. Part 224): but only to those railroad freight cars and locomotives that cross a public or private highway-rail grade crossing, are used for revenue or work train service, and are not being used exclusively in passenger service;

- Accident/incident reporting regulations (49 C.F.R. Part 225);
- Passenger hours of service regulations (49 C.F.R. Part 228)²;
- Steam locomotive inspection regulations (49 C.F.R. Part 230);
- Grade crossing signal system safety regulations (49 C.F.R. Part 234);
- Bridge safety standards (49 C.F.R. Part 237)³; and
- All general power and enforcement provisions of the rail safety statutes (e.g., subpoena authority, civil penalty authority, disqualification authority, and emergency order authority).⁴

Thus, there are many FRA regulations that do not presently apply to tourist railroads that do not operate over the general system. However, FRA's emergency order authority permits it to address a true safety emergency arising from conditions (e.g., the proper functioning of air brakes) covered by those regulations or any other regulations (e.g., the track safety standards) that do not apply outside of the general system. Consequently, even tourist railroads that operate off of the general system should understand that FRA has jurisdiction to inspect their operations and to take emergency action if those operations pose an imminent hazard of death or injury.

² 49 C.F.R. Part 228, Subparts B & F, apply to train employees on tourist railroads. See 76 Fed. Reg. 50360, 50361, 50380, 50382 & 50383 (Aug. 12, 2011). Statutory hours of service restrictions on duty hours (49 U.S.C. ch. 211) apply to dispatchers and signal employees.

³ See 75 Fed. Reg. 41282, 41284 & 41288 (July 15, 2010) (stating that the bridge safety standards apply to both insular and non-insular tourist railroads).

⁴ The user fee regulations, formerly at 49 C.F.R. Part 245, have been removed from the Code of Federal Regulations and are not in effect because the Secretary's authority to collect user fees expired at the end of fiscal year 1995. See 74 Fed. Reg. 25176 (May 27, 2009).